



## CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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**EXECUTIVE DIRECTOR**  
Mark Stivers

TO: TCAC Stakeholder Community  
FROM: Mark Stivers, Executive Director  
DATE: December 21, 2015  
RE: Frequently Asked Questions on Transfer Events

**1. If a project is subject to the Capital Needs Covenant requirement and the sponsor intends to apply for resyndication within the near future, can the sponsor forgo the Capital Needs Covenant and just address the Short Term Work reserve requirement at resyndication?**

No. Prior to the closing of a resyndication transaction, there is no guarantee that a resyndication will occur. As a result, TCAC will require sponsors engaging in a Transfer Event prior to the closing of a resyndication transaction to enter into a Capital Needs Covenant if applicable. If the resyndication occurs within a short timeframe, the higher annual replacement reserve contributions of the Covenant, if any, will be moot as the Covenant will terminate at the closing of the resyndication.

If the transfer is concurrent with the closing of the resyndication financing, no Capital Needs Covenant is required, but the provisions of Section 10320(b)(4) apply.

**2. If a project is not subject to an existing Capital Needs Covenant, and the transfer associated with a resyndication will not distribute Net Project Equity to parties, must the underwriting for the project include a capitalized replacement reserve in an amount equal to the costs of any Short Term Work identified in the capital needs assessment pursuant to Section 10320(b)(4)(A)?**

No. Notwithstanding that the resyndication may be a Transfer Event, because the project is not under a Covenant at the time of resyndication and the transfer associated with the resyndication distributes no Net Project Equity to parties, TCAC will waive the requirement to include a capitalized replacement reserve in the underwriting of the project. As part of the TCAC

resyndication application, the applicant must submit a sources and uses worksheet from the transfer which calculates Net Project Equity and demonstrates that the transfer does not distribute Net Project Equity to parties.

**3. At resyndication when the provisions of Section 10320(b)(4)(A) requiring project underwriting to include a capitalized reserve for Short Term Work apply, how should the capitalized reserve and the short term work be reflected in the resyndication application?**

Section 10320(b)(4)(A) provides that if a resyndication occurs concurrently with a Transfer Event<sup>1</sup> or when the project is subject to an existing Capital Needs Covenant, the underwriting for the new reservation of 9% or 4% credits shall include a capitalized replacement reserve (the “Short Term Work Capitalized Replacement Reserve”) in an amount equal to the cost of any Short Term Work which will not be performed as of the date of the syndication<sup>2</sup> of the new 9% or 4% tax credits reserved for the project (the “Short Term Work Reserve Amount”). The costs of the Short Term Work are determined by a Qualified Capital Needs Assessment performed in connection with the Transfer Event.

**A. Applications in which Short Term Work Capitalized Replacement Reserve will not be used to fund rehabilitation expenses.**

An applicant may submit an application for credits establishing a Short Term Work Capitalized Replacement Reserve which shall not be used to fund project rehabilitation expenses. In this case, the Short Term Work Capitalized Replacement Reserve should be shown as a project “use” funded from available project sources. The Short Term Work Capitalized Replacement Reserve must be fully funded when the project is placed in service, must be used to fund the future capital needs of the project, and shall be held pursuant to Section 10327(c)(7) of the Regulations. Given that the funding of a reserve is not a basis eligible item, the applicant will not receive basis for the amount funded into the Short Term Work Capitalized Replacement Reserve.

**B. Applications in which Short Term Work Capitalized Replacement Reserve will be used to fund rehabilitation expenses.**

Given that a primary policy purpose of adopting regulations regarding Transfer Events was to ensure that TCAC Restricted Projects were well maintained, TCAC will allow funds which otherwise would have funded the Short Term Work Capitalized Replacement Reserve to be used to fund rehabilitation expenses. If an applicant desires to use the Short Term Work Reserve

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<sup>1</sup> Please note that pursuant to Section 10302(qq), not every transfers of tax credit projects constitutes a “Transfer Event.” This response is applicable only to applications for new tax credits in which the applicant has acquired the project through a Transfer Event as defined in Section 10302(qq) and for which the provisions of Section 10320(b)(4) are not waived.

<sup>2</sup> The “Short Term Work which will not be performed as of the date of the syndication” may take three forms: 1) for a project subject to an existing Capital Needs Covenant for which there is no Subsequent Transfer Event at resyndication, any uncompleted Short Term Work from the Qualified Capital Needs Assessment completed at the time of the Initial Transfer Event; 2) for a project in which the Transfer Event is concurrent with the resyndication and not eligible for a waiver, all of the Short Term Work identified in the Qualified Capital Needs Assessment completed for the resyndication; and 3) for a project subject to an existing Capital Needs Covenant and for which the resyndication constitutes a Subsequent Transfer Event not eligible for a waiver, both of the above.

Amount to fund rehabilitation expenses, the application should note that that Short Term Work Reserve Amount is being used to fund rehabilitation activities and need not show a Short Term Work Capitalized Replacement Reserve in the project financing. The applicant may receive eligible basis for the rehabilitation work performed using the Short Term Work Reserve Amount only if the applicant can demonstrate that the Short Term Work Reserve Amount was funded by (i) a credit from the seller of the Project in the amount of the Short Term Work Reserve Amount, (ii) a reduction in the purchase price of the project as compared to the purchase price of the project had the project not been subject to the Short Term Work capitalized replacement reserve requirement (as shown by an appraisal that calculates the impact of the Short Term Work capitalized replacement reserve requirement on value), and/or (iii) general partner equity (which may be in the form of developer fee contributed to the project [a deferral does not qualify]).

For all projects (including those submitted using the methodology set forth in item A hereof) TCAC will require confirmation at placed in service that the applicant has completed all Short Term Work items or that these Short Term Work items have been rendered moot by the larger rehabilitation work.

**4. If a resyndication includes a Subsequent Transfer as described in Section 10320(b)(4)(B) and the value of the property has increased from the Initial Transfer, how do I determine the amount of the required seller carryback or equity contribution?**

The following methodology shall be used to calculate the amount of the required seller carryback or equity contribution:

- A. Subtract the original acquisition cost from the new valuation (the “Increased Value”);
- B. Subtract the aggregate annual replacement reserve contributions required under the standard TCAC replacement reserve requirements from the aggregate annual replacement reserve contributions required by the Capital Needs Covenant. This difference is then divided by the cap rate used in the appraisal associated with the resyndication (the “Reserve Requirement Value Differential”)

(aggregate annual replacement reserve contributions required by the Capital Needs Covenant -  
aggregate annual replacement reserve contributions required by TCAC)

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Cap rate

- C. The amount of the seller carryback shall be the amount of the Reserve Requirement Value Differential but not in excess of the Increased Value. In the event that assumed third-party secured debt on the property equals or exceeds the property’s value from the appraisal associated with the resyndication, no seller carryback or equity contribution is required.

**5. If a resyndication includes a Subsequent Transfer as described in Section 10320(b)(4)(B), the value of the property has increased from the Initial Transfer, and the seller chooses to provide a carryback loan to meet TCAC requirements, what terms must seller carryback note contain?**

The seller carryback shall be a 55-year residual receipts loan payable solely from project cash flow.